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JOSEPH F. SPANIOL, JR.  
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No. 88-1872

IN THE

## Supreme Court of the United States

OCTOBER TERM, 1988

CYNTHIA RUTAN, *et al.*,*Petitioners,*

v.

REPUBLICAN PARTY OF ILLINOIS, *et al.*,*Respondents.*On Petition For Writ Of Certiorari To The United  
States Court Of Appeals For The Seventh Circuit

## PETITIONERS' REPLY BRIEF

## Of Counsel:

MARY LEE LEAHY  
CHERYL R. JANSEN  
KATHRYN E. EISENHART  
LEAHY LAW OFFICES  
308 East Canedy  
Springfield, Illinois 62703  
(217) 522-4411

MARY LEE LEAHY  
LEAHY LAW OFFICES  
308 East Canedy  
Springfield, Illinois 62703  
(217) 522-4411

*Counsel of Record  
for Petitioners*

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**PETITIONERS' REPLY BRIEF**

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**INTRODUCTION**

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The Petitioners will be brief in their response to the arguments raised by the Respondents.

## ARGUMENT

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The promotion, transfer and hiring system described in the Complaint is a strict political test: those persons politically favored are promoted, transferred and hired; those persons not politically favored are not promoted, transferred or hired. That is the very purpose and effect of the system.

In *Elrod v. Burns*, 427 U.S. 347 (1976), an employee of the sheriff's department had to obtain the sponsorship of, or affiliate with, the favored political party in order to retain his employment. That strict test is the very one used in the instant case. The form used in promotion (set forth verbatim in the Petition for Certiorari, pp. 8-9) requires affiliation and sponsorship. The factors considered are primary voting record, membership in the favored party political clubs, financial contributions to the favored party, and precinct work for that party. That form must be signed by the precinct committeeman of the favored party, indicating his sponsorship of the person applying for the promotion. That same strict test applies to transfer and hiring. The reason Petitioners Rutan and Taylor were not promoted was their political beliefs and affiliation. The reason Petitioner Taylor could not obtain the geographical transfer was because he could not obtain the approval of the Republican County Chairmen involved. The reason Petitioner Moore could not get a job was because he was not politically favored. There is no other reason. The only reason for the adverse action toward Petitioners was their political beliefs and associations; due to their political beliefs and associations they could not obtain the required affiliation and sponsorship.

Respondents' characterization of the denial of promotion, transfer or hiring as "non-punitive" is a contradiction in terms. Anyone who has supervised an employee knows there are two forms of punishment—each designed to bring behavior into desired conformity. Denying an employee a raise by denying promotion can have a more devastating impact than a two-day suspension. Both are forms of punishment. Both are designed to bring behavior into conformity with the desired conduct: financial "contributions" and "volunteer" support of the favored party and affiliation with that party.

## CONCLUSION

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This Court should grant the Petition for Certiorari to decide the important fundamental First Amendment issues raised by this case and to provide uniform law throughout the land.

Respectfully submitted,

*Of Counsel:*

MARY LEE LEAHY  
CHERYL R. JANSEN  
KATHRYN E. EISENHART  
LEAHY LAW OFFICES  
308 East Canedy  
Springfield, Illinois 62703  
(217) 522-4411

MARY LEE LEAHY  
LEAHY LAW OFFICES  
308 East Canedy  
Springfield, Illinois 62703  
(217) 522-4411

*Counsel of Record  
for Petitioners*

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